

By the Office Action of 02 March 1999, Paper No. 5, Claims 1-9 are pending in the application, and are currently rejected by the Examiner. By the present Response and Amendment, Claim 1 is amended to clarify that the game call is a single unit with the body attachment. No new matter is believed introduced by the present Response and Amendment. Applicant respectfully submits that the present application is now placed in full condition for allowance for the reasons given below.

Claims 1-9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,607,091 to Musacchia ("the '091 patent"). The Examiner realleges the grounds of rejection of the First Office Action of 02 August 1999, Paper Number 3, and submits that Applicant's arguments filed 2 February 2000 were considered, but were not persuasive.

The Applicant respectfully submits that the Examiner did not appropriately weigh the §1.132 Declaration of John Musacchia, Jr. indicating an unsolved need addressed by the present invention, as the Examiner makes no comment of the Declaration, other than to say the arguments of 02 February 2000 were not persuasive. Similarly, it does not appear that the Second Office Action responds to any of the §103 rebuttal evidence that the Applicant presented in its Response of 02 February 2000, namely the benefit of the present invention wherein the game call cannot be separated from the holder, the benefit of the invention regarding it more realistic sound, and the benefit of the invention regarding its economy.

Additionally, there is no reference in the Office Action to any prior art teaching or suggestion of a game call as disclosed and claimed in the present application, as is required. There is simply no evidence of a suggestion or motivation either in the '091 reference itself, or in the knowledge generally available to one of ordinary skill in the art, to modify the *game call holder* of the '091 patent as is presented in the present application.

The Examiner submits that the *game call holder* of the '091 patent is shown in a figure with a separate game call attached thereto, and that this somehow makes obvious the present invention. Yet, there is no motivation or suggestion to modify the '091 *game call holder* to add a game call to the holder making the game call with holder a unitary device, which unitary device has the benefits disclosed in the present application. Applicant agrees with the Examiner that the *game call holder* of the '091 patent is shown releasably securing a game call. However, such



toward the game, the game call would fall to the ground. As everything related to the hunt was camouflaged, including the call, it was rare for a dropped call to be found.

2. Customers also sought more realistic sound from their calls. As calls of several dimensions could fit on the '091 holder, depending on proper fit, the sound of the game used in connection with the holder was not always true.

3. Customers also questioned the costs associated with buying separate game calls and holders.

The Examiner has not pointed to any reference in the prior art disclosing a device that could solve these complaints. The present device is the solution. The inventor designed the present unitary game call in an attempt to address these disadvantages, as is disclosed in the application:

In U.S. Patent No. 5,607,091 to Musacchia, is described a universal game call holder, which holder device comprised a platform to be used in conjunction with a separately purchased prior art call, wherein the call is retained in the platform by a retaining element. With the '091 holder, the conventional call slips within an aperture in the platform, which platform elevates the bottom of the call away from the user's limb.

The Musacchia device [of the '091 patent] discloses and claims only a game call platform having, among other things, a retaining element to maintain the hunter's call in contact with the platform. The present invention obviates the need for: 1) a separate platform; 2) a retaining element to secure the call to the holder; and 3) a separate call. The present call is a unitary call device, eliminating any construction by the user, and having no retaining element to use, repair or replace. Specification, p. 3, lines 3-13.

As further disclosed, the present invention provides numerous advantages over the prior art, including the '091 holder:

The present game call has a number of advantages over the above prior art. The unitary game call production costs are lower than the production costs associated with independently producing a game call and a holder. Therefore, the costs to the hunter for a game call that is elevated from the hunter's limb, while being attached thereto, will be less. Additionally, the prior art holder and aperture therethrough are of one design, while the sound emanating surface of the game call placed in the holder maybe an entirely different design. The present invention is manufactured as one piece. Therefore, the acoustics of the present invention are considerably better than the prior art acoustics. The sound emanating surface of the present invention is not hindered or impeded by a misshaped aperture for the specific game call used in the prior art. Specification, p. 4, lines 18-27.

The Declaration Under 37 C.F.R. §1.132 Of John Musacchia, Jr. was enclosed in the 02 February 2000, indicating the long-felt but unsolved need addressed by the present invention as detailed above. A Declaration containing evidence of long-felt but unsolved needs must be considered by the examiner in determining the issue of obviousness of claims for patentability under 35 U.S.C. §103. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

In view of the foregoing, Applicant submits that the present invention is non-obvious in view of the '091 reference, and respectfully requests reconsideration of this ground of rejection.

### CONCLUSION

By the present Response and Amendment, the Application has been in placed in full condition for allowance. Accordingly, Applicant respectfully requests early and favorable action. Should the Examiner have any further questions or reservations, the Examiner is invited to telephone the undersigned Attorney at 404.885.2773.

I hereby certify that this correspondence is being submitted via facsimile to fax number 703 308 7768, addressed to: Assistant Commissioner for Patents, BOX NO-FEE AMENDMENT Washington, D.C. 20231.

on 5/31/00

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May 31, 2000

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